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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
	:	
In re	:	Chapter 15
	:	
OCEAN RIG UDW, INC., et al.	:	Case No. 17- 10736 (MG)
	:	
Debtors in a Foreign Proceeding.	:	Jointly Administered
	:	
-----X	:	

**NOTICE OF APPEAL OR, IN THE ALTERNATIVE,
MOTION FOR LEAVE TO APPEAL**

Highland Capital Management LP, on behalf of certain of its or its affiliates' funds and managed accounts (collectively, "Highland"), by and through undersigned counsel, pursuant to 28 U.S.C. § 158(a)(1) and Rule 8003 of the Federal Rules of Bankruptcy Procedure, hereby appeals to the United States District Court for the Southern District of New York from the Bankruptcy Court's ruling (the "Order") made and so-ordered on the record during the April 20, 2017 hearing, and entered on the docket of the above-captioned Chapter 15 proceeding on April 27, 2017 [Dkt. No. 55], denying that portion of Highland's Limited Objection [Dkt. Nos. 25 & 46] requesting that the Court modify the Provisional Relief Order [Dkt. No. 41] to permit Highland and other creditors to file an involuntary petition for relief against the Debtors (or any one of them). A true and correct copy of the so-ordered transcript reflecting the Order is attached hereto as **Exhibit A**.

The names of all parties to the Order appealed from and the names, addresses and telephone numbers of their respective counsel are as follows:

I. APPELLANT AND COUNSEL

A. Appellant:

Highland Capital Management LP, on behalf of Highland Floating Rate Opportunities Fund, Highland Global Allocation Fund, Highland Opportunistic Credit Fund, Highland Loan Master Fund, L.P., and NexPoint Credit Strategies Fund, as holders of (i) the majority in aggregate principal amount of the outstanding 7.25% Senior Notes due 2019 governed by an indenture, dated as of March 26, 2014, by and between Deutsche Bank Trust Company Americas as Trustee and Ocean Rig UDW, Inc. (“Ocean Rig”) (ii) Term Loans made pursuant to that certain Credit Agreement, dated as of July 12, 2013, as amended and restated by and among Drillships Financing Holding Inc. (“DFH”) and Drillships Projects Inc. (“DPI”), as borrowers, Ocean Rig, as a guarantor, Deutsche Bank AG New York Branch, as administrative and collateral agent, and the lenders party thereto (the “DFH Credit Agreement”), and (iii) shares of common stock of Ocean Rig.

B. Counsel to the Appellant:

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II. APPELLEES AND COUNSEL

A. Appellees:

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**MOTION FOR LEAVE TO APPEAL, FILED SUBJECT TO, AND IN THE
ALTERNATIVE TO, NOTICE OF APPEAL**

In the alternative, Highland (“Appellant”) incorporates its Notice of Appeal and files this Motion for Leave to Appeal (the “Motion”) pursuant to 28 U.S.C. §§ 158(a)(1) and 158(a)(3), and Federal Rule of Bankruptcy Procedure 8003 and 8004, seeking leave to appeal from the Order. Appellant submits the attached Memorandum of Law in support of this Motion.

Dated: May 11, 2017
New York, New York

Respectfully submitted,
VENABLE LLP

By: /s/ Jeffrey S. Sabin
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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

OCEAN RIG UDW INC.,

Debtor.

Case No. 17-10736-mg
New York, New York
April 20, 2017
3:05 p.m. - 4:25 p.m.

- TRANSCRIPT -

17-10736-MG SIMON APPELL AND ELEANOR FISHER, CHAPTER 15

HEARING REGARDING WHETHER CREDITORS MAY FILE
INVOLUNTARY CHAPTER 11 AGAINST NON-DEBTOR
CHAPTER 15 AFFILIATES (DOC. NOS. 46, 47, 48)
BEFORE THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE

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- P R O C E E D I N G -

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1 THE COURT: Chapter 15 case, involving Ocean Rig UDW,
2 Inc., 17-10736.

3 All right. I have these pleadings that have been
4 filed in connection with whether creditors can file an
5 involuntary proceeding or proceedings. And so, let me hear from
6 the creditors first. Well, first, give me an update on where
7 things stand.

8 MR. HOLLANDER: Well, Your Honor, we're --

9 THE COURT: You have to make your appearance.

10 MR. HOLLANDER: Evan Hollander, a counsel for the
11 Petitioners here in this case.

12 We are progressing on getting signups to the RSA.

13 THE COURT: What does that mean?

14 MR. HOLLANDER: The restructuring support agreement.

15 THE COURT: No, I know what the -- what's the status
16 of it?

17 MR. HOLLANDER: The status is, we have approximately
18 85 percent at the UDW level. We also have, Your Honor, some
19 significant support down at the DRH level. That's Drill Rigs
20 Holdings. That's the level where the 6.5 Secured Noteholders
21 are.

22 THE COURT: Since the last time you were here, have
23 there been hearings in the Cayman?

24 MR. HOLLANDER: There's been no hearings in the Cayman
25 since we were last here. However, the JPLs have reached out to

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1 both Highland Capital, as well as the Senior Secured
2 Noteholders. Simon Appell was here today in New York with his
3 associate, Chris Duffy. They met with the Senior Secured
4 Noteholders this morning. I don't know whether they have
5 scheduled a meeting with Highland while they're here.

6 THE COURT: Are there any hearings scheduled?

7 MR. HOLLANDER: I don't believe there's current
8 hearings scheduled in the Caymans, Your Honor.

9 THE COURT: Who is the judge who's presiding over the
10 matter in the Cayman?

11 MR. HOLLANDER: I believe Judge McMillan.

12 THE COURT: All right. Anything else you want to tell
13 me about the status before we --

14 MR. HOLLANDER: That's it, Your Honor.

15 THE COURT: Okay. All right. Let me hear from
16 creditors.

17 MR. SABIN: Good afternoon, Your Honor, Jeffrey Sabin
18 from Venable, LLP, on behalf of Highland Capital Management, as
19 manager for various funds that own notes unsecured, issued by
20 Ocean Rig, UDW.

21 Your Honor, thank you very much for the opportunity to
22 further brief an issue Highland first raised in its objection to
23 the motion of the provisional joint liquidators, and first
24 discussed at the April 3 hearing. And that is whether this
25 Court has discretion in our view under Section 1519 or 1522 and

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1 Bankruptcy Rule 7065 to prohibit and/or temporarily restrain
2 Highland and/or other unsecured creditors at UDW from
3 immediately filing an involuntary petition, i.e. before there
4 would be a recognition order if there is one in this case.

5 THE COURT: May I ask you this?

6 MR. SABIN: Sure.

7 THE COURT: Because on April 7 I entered an order
8 granting provisional relief, and Paragraph 1-A on pages 4 and 5
9 say "Section 362 of the Bankruptcy Code applies with respect to
10 the Debtors and the property of the Debtors that is within the
11 territorial jurisdiction of the United States. For the
12 avoidance of doubt, the stay will operate to stay and restrain
13 all holders of scheme indebtedness or any holder's affiliates
14 from (a) commencing or continuing any actions against the
15 debtors or their property within the territorial jurisdiction of
16 the United States. Further defined in 11 U.S.C. 1052(8)."

17 So, do you agree that that order that I entered,
18 correctly or incorrectly, prohibits creditors from filing an
19 involuntary case against the Debtor in New York currently?

20 MR. SABIN: Yes, that's how we read it.

21 THE COURT: Okay.

22 MR. SABIN: Except that that same order preserved our
23 rights to make these arguments today.

24 THE COURT: I know. I know. But essentially, I
25 granted the foreign representatives the relief that they

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1 requested. And it seems to me that there are really two issues
2 now. The relief that I granted, did I not have the power to do
3 it? And if I had the power to do it, has Highland demonstrated
4 cause to lift the stay? Would you agree those are the two
5 issues?

6 MR. SABIN: Yes. I would state it a little
7 differently, but I would agree.

8 THE COURT: Okay. So -- well, go ahead with your
9 argument. I'll let you argue --

10 MR. SABIN: Surely.

11 THE COURT: And then we'll come back.

12 MR. SABIN: No, no, no. I'm happy to answer any
13 questions as we go along, because that may be the easiest way to
14 dialogue it, and --

15 THE COURT: Well, all right. Then let me ask this.

16 MR. SABIN: Surely.

17 THE COURT: With respect to the first proposition, do
18 you agree that I had authority under 1519 to grant the relief
19 that I did grant?

20 MR. SABIN: Respectfully, I do not.

21 THE COURT: I don't think it's an easy issue. Let me
22 put it that way. Are there any cases that say I don't?

23 MR. SABIN: No. In fact, my next statement was to be,
24 I believe this is an issue that has not been addressed by any
25 court anywhere.

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1 THE COURT: Well, let me test that.

2 MR. SABIN: Okay.

3 THE COURT: Because when I read Judge Hale's decision
4 in Vitro in 2011, and he goes through an analysis, and so, this
5 is at 455 B.R. 579, in the second column, top of the second
6 column, "However, as stated previously, the relief enumerated in
7 Section 1519 is not all-inclusive. See 11 U.S.C. § 1519(a)
8 ("including"); see also In re Ran, which is a Fifth Circuit
9 decision, (1519(a)(1)-(3) represents a "non-exhaustive list of
10 relief available to a foreign proceeding's representative in a
11 Chapter 15 case"). Ran is an appeal from a denial of
12 recognition, and the circuit affirms the denial of recognition,
13 but in the course of it, has this language about the non-
14 exhaustive list. And so, it seems to me that Vitro may be
15 closest that I see. I read Ran, I read Pro-Fit Int'l Ltd., and
16 so my question is, aren't those three cases -- you say it's a
17 question of first impression; I read those cases as saying it's
18 not a question of first impression. That those cases have said
19 that 1519(a) -- and I'll leave some words out -- where relief is
20 urgently needed to protect the assets of the Debtor or the
21 interests of creditors, grant relief of a provisional nature
22 including. And then (1), (2) and (3). (1), (2) and (3) don't
23 cover staying somebody from filing an involuntary. I would say
24 that. But I think Ran, Vitro and Pro-Fit would seem to say yes,
25 but the authority is broader than just 1519(a)(1), (2) and (3),

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1 including is used, applying the 362 stay. Do you agree?

2 MR. SABIN: I wouldn't go that far. I do not read
3 those cases that far, and perhaps I should go on for a few
4 minutes --

5 THE COURT: Sure. Go ahead.

6 MR. SABIN: -- so that I can supplement what you have
7 read, because I know you've read our papers, and I know you've
8 read our opposition papers. So, I start out with the bottom
9 line that I respectfully differ in those readings, and I believe
10 that there has been no case that has on-point addressed the
11 issue, limited to the rights of unsecured creditors --

12 THE COURT: You hit the issue now and nobody is --

13 MR. SABIN: No, I understand. But it's the exercise
14 of a statutory right, i.e. filing of an involuntary, and whether
15 this Court, in essence, has discretion to abrogate that
16 statutory right in this context. And so, let's talk about rules
17 of construction first, and then I'll talk about statute.

18 Rules of construction, two-fold. First, in *pari*
19 *materia*. Supreme Court in 1972 in a case called Erlenbaugh v.
20 United States put it simply, statutes that pertain to the same
21 subject should be construed as if they were one law. And indeed
22 at least one case has looked at Chapter 15 issues in that
23 context and said, you're right. And that's Qimonda. And the
24 Second Circuit has gone one step further in connection with a
25 Statutory Rule of Construction called the Whole Act Rule of

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1 Construction. And the Second Circuit three times, first in
2 2004, then in 2008, and then in 2011; Rabin v. Wilson-Coker,
3 United States v. Kaiser, and in United States v. Kozeny,
4 basically, saying the following:

5 That the Whole Act Rule of Statutory Construction to
6 read a section of a statute is not to be read in isolation from
7 the context of the whole act. You'd look at the entire
8 provisions. And in fact, when we do that here, unlike any of
9 the three cases you mentioned, I'm going to tell you now what we
10 think are the relevant statutes under these principles of
11 statutory construction that are relevant to our argument.
12 Whether I convince you, is another story, Your Honor. But let
13 me for the record, name the statutes.

14 103, 301, a right the Debtor has to file a voluntary.
15 303, the issue today. 362, if I file an involuntary and you
16 give me that right, automatic stay. 541, if we file an
17 involuntary, an estate is created, including the possibility
18 that the draft complaint that we had appended becomes an asset
19 of the estate available for all. 1501(3), 1501(4), dealing with
20 policy that underlies Chapter 15. 1520(a) and (c), 1529(2)(a)
21 and (4), a critical statute inside the rules of construction, as
22 I will articulate in a minute, because I think it gives meaning
23 to the position we're articulating on Section 1520(c), which is
24 the right today to file the involuntary before recognition.

25 1525, 1526, 1527, which otherwise say, if you adopt

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1 our reading, and if we were to file an involuntary against UDW.
2 1529(4) says okay, the Court here, as opposed to Cayman, has
3 various technical rights to do with cooperation between the two
4 proceedings. 1528, which talks in the opposite, terms of
5 limitation of what may happen afterwards versus before. 1519
6 and 1522, the various sections that govern your discretion
7 and/or the word inclusive. 1511, which makes clear that a
8 provisional joint liquidator does not have a right to go file an
9 involuntary or a voluntary until there is recognition. And
10 last, but not least, 305, which when combined with Section 103
11 in terms of applicability, only arises if, and when, and after
12 an involuntary petition is filed. So --

13 THE COURT: Let me ask you this. Let me interrupt
14 you.

15 MR. SABIN: Surely.

16 THE COURT: Let me ask you about 1520(c).

17 MR. SABIN: Okay.

18 THE COURT: And obviously, that's effective
19 recognition as a foreign main proceeding. And I take it you
20 would agree upon recognition as a foreign main proceeding, the
21 foreign representative could file a Chapter 11?

22 MR. SABIN: That's correct. That's 1511. Uh-huh.

23 THE COURT: Sure. Are there any other cases or
24 legislative history or a guide to enactment -- I don't know why,
25 but I didn't look to see whether the same words were in the

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11

1 model law. Because 1520(c) says Subsection-A does not affect
2 the right of a foreign representative or an entity to file a
3 petition commencing a case under this title. Is there a gloss
4 on the reference "or an entity"?

5 MR. SABIN: There is not. And I would suggest to you
6 that what we need to do to read whatever confusion or ambiguity
7 there is temporal-wise as to whenever an entity can file an
8 involuntary, pre- or post-recognition, let's turn to Section
9 1529(2)(a). And when we do so, we find an interesting lead-in
10 in Section 2. "If a case in the United States under this title
11 commences after recognition, or after the date of filing of the
12 petition for recognition." Suggesting to me, as I've been
13 arguing to you, that when you read these two together, the only
14 entity before recognition that can file an involuntary or a
15 voluntary, because both 1520(c) and this section deal with
16 either, are either the Debtor, which has the statutory right
17 under 301, or unsecured creditors that have a statutory right
18 under 303. And in fact, I would go further in connection with
19 the statutory rules of construction that that interpretation is
20 important because there are different consequences if there's a
21 filing pre-recognition or post-recognition.

22 THE COURT: Are there any cases where after
23 recognition, creditors have filed an involuntary?

24 MR. SABIN: There probably are.

25 THE COURT: You don't cite any cases?

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1 MR. SABIN: No, I don't. I don't. Because --

2 THE COURT: Have you looked to see whether -- and I
3 don't know of any.

4 MR. SABIN: I don't know off the top of my head. I
5 think there are, but ours is --

6 THE COURT: You know, I think they're not. I don't
7 know, my answer is probably as good as yours.

8 MR. SABIN: In any event --

9 THE COURT: If you're going to tell me that there are,
10 fine them.

11 MR. SABIN: In any event, I can't find it. And my
12 argument to you is that, I want to go a step further to respond
13 to your 1520(c) and 1529.

14 THE COURT: So, when I started working on this and I
15 asked myself if Highland could file an involuntary after
16 recognition, why shouldn't they be able to file it now?

17 MR. SABIN: That was my first argument on April 3 when
18 we filed those papers.

19 THE COURT: And the more I focused on this, it's not
20 clear to me that even after recognition, Highland could file an
21 involuntary. And that's why I'm focusing on the language of
22 1520(c) to see whether there's any authority. I don't know
23 whether these words track in the model law or whether there's
24 anything in the legislative guide to enactment.

25 MR. SABIN: Couldn't find anything, Your Honor.

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1 THE COURT: What does it mean "an entity"? It's an
2 odd choice of words. It isn't any party in interest, it isn't
3 creditor. Entity, which is not one on one, doesn't define
4 entity.

5 MR. SABINE: I understand.

6 THE COURT: So, the more I thought about it --

7 MR. SABINE: I wish I could give you guidance, Your
8 Honor.

9 THE COURT: You know, the more I thought about it,
10 well maybe -- because I originally thought, oh, okay, 1520(c),
11 Highland could file an involuntary if there's recognition.
12 Well, if they could do that, what in the statute should it be
13 interpreted as saying that they can't do it before? And then
14 when I started thinking about it, I thought, well, maybe the
15 statute means they can't even after. And then I said, well,
16 even if theoretically they could, could I enjoin them from doing
17 so? And would it run afoul if recognition as a main proceeding
18 occurs or 362 does apply? And 362(a)(1) would say you can't
19 file in just the way the order I've entered now.

20 MR. SABIN: I would disagree, and that's where I was
21 going in terms of the next relevant statute that comes into play
22 at least from my thinking and perhaps for yours, and that's
23 1528. And that is, if it were filed after recognition, as
24 opposed to before, then it's limited to assets within the United
25 States, and the stay is limited to assets in the United States.

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1 THE COURT: Sure, but 1528 doesn't say who filed. It
2 says "After recognition of a foreign main proceeding, a case
3 under another chapter of this title may be commenced"

4 MR. SABIN: Understood. But I'll take plain English
5 for purposes of the definition of the term "entity" since I
6 can't find anything in the legislative history one way or
7 another.

8 THE COURT: Okay.

9 MR. SABIN: And an entity in this case, it seems to
10 me, has got to include both the Debtor and people who are given
11 rights under --

12 THE COURT: I have no idea whether it does or not.

13 MR. SABIN: Neither do I, but --

14 THE COURT: It's not a defined term in the Code. Is
15 it?

16 MR. SABIN: No.

17 THE COURT: Go ahead.

18 MR. SABIN: So, if you were to adopt my theory, 303
19 itself is a statutory privilege inside the entity of what we're
20 dealing with by way of statutory construction. And if it were
21 to apply pre-recognition, then we have a stay, we have 541
22 property --

23 THE COURT: Well, you see, that's what really bothers
24 me, Mr. Sabin.

25 MR. SABIN: Okay.

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15

1 THE COURT: Because what you're trying to do is
2 totally screw up the proceeding in the Cayman, and I don't know
3 if the Cayman confirms the scheme of arrangement, and the issue
4 comes here as to whether the Court should recognize and enforce
5 it or not. I don't know. I have no idea. But it's clear as
6 day to me that what you're trying to do, you, representing
7 unsecured creditors, you're trying to stop the Cayman proceeding
8 dead in its tracks by saying we filed a Chapter 11 involuntary
9 case, the automatic stay applies worldwide, and too bad, Cayman
10 judge, you're stuck. That's what you're trying to do. And that
11 bothers me.

12 MR. SABIN: Well, I will tell you that is not the
13 motive --

14 THE COURT: But that could be if I let you file.

15 MR. SABIN: No, I don't think it would be.

16 THE COURT: Why not?

17 MR. SABIN: Because 1525, 1526 and 1527 appertain in
18 that scenario. And there are cases, and in fact, we cite two of
19 them in our brief. There are cases where there are indeed, at
20 the same time, concurrent proceedings pursuant to a full case,
21 and pursuant to whether it's a Cayman, or a Swiss case, or
22 anything else. And we cite both of those in our brief. And in
23 fact --

24 THE COURT: Is any one of those cases an involuntary?

25 MR. SABIN: Yes, one of those was an involuntary.

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16

1 THE COURT: Which case?

2 MR. SABIN: That's the Tradex Swiss case. So, it has
3 happened, and if you take us on our papers, what is it we're
4 worried about? There are no hard assets in the United States.
5 It's not as if we're going to go after bank accounts or anything
6 else. This --

7 THE COURT: No. That's what convinces me that all
8 you're trying to do is stop --

9 MR. SABIN: No.

10 THE COURT: -- the scheme of arrangement dead in its
11 tracks before the court. Actually, one of the questions I was
12 going to raise is 1525, 1526; let's arrange direct communication
13 between the courts now, and let me coordinate with the judge in
14 the Cayman. Nobody here has been able to tell me about that
15 proceeding. There's no hearing scheduled.

16 MR. SABIN: There's no scheme filed yet.

17 THE COURT: Well. So, I want to have a direct
18 communication with the judge in the Cayman if he's willing, so
19 that he understands that I understand that I'm certainly not an
20 expert on Cayman proceedings, and certainly not with respect to
21 a scheme of arrangement. I'm not averse to having court-to-
22 court communication with the Cayman judge before I decide the
23 issue of whether or not to permit an involuntary to be filed.
24 Because it does seem to me, and I'll give you a chance to argue
25 further; that the cases that I've referenced already, let's say

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1 1519(a) says including, would permit me to extend, 362, and I've
2 already done so, and that's the authority for doing it.

3 I think there's also an issue whether 1519(a)(3),
4 which permits me any relief referred to in Paragraphs 3, 4 or 7
5 of 1521(a); 1521(a)(7) granting any additional relief that may
6 be available to a trustee. Obviously, except for avoidance
7 actions. Would additional relief available to a trustee include
8 a 105 injunction, actions against even third parties? There's a
9 lot of non-debtors here. You know Vitro refused to extend the
10 stay to non-debtors. I'm not too keen about it, and that issue
11 is not before me, but it seems to me, why isn't what they
12 received authorized under 1521(a)(7)?

13 MR. SABIN: I go back to my argument as to, what is
14 it, who is it, that is within the term "entity"? And if you're
15 going to exclude --

16 THE COURT: That's the issue getting recognized.

17 MR. SABIN: That's correct.

18 THE COURT: It's not the issue for today.

19 MR. SABIN: No, I think it's an issue for today under
20 this. You've got two different statutes read together which
21 contemplate that there's a filing pre-recognition. And there's
22 only one way to get there. Do you otherwise say an entity does
23 not include unsecured creditors, and therefore it's only the
24 Debtor? No need to do that. That isn't what it says. In fact,
25 the legislative history simply uses the term "entity" itself.

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1 So --

2 THE COURT: I didn't look to see. I didn't have time
3 to look. Is this coming from the model law?

4 MR. SABIN: It doesn't say, but the concept is from
5 the model law. So, from my perspective, if it's so clear that
6 we are only seeking to torpedo the proceeding, which in a
7 minute, I will try to explain how that's far from reality, and
8 it's far from the truth; then, clearly, if my argument is right,
9 and we were to file the involuntary, there'd be a motion in 24
10 hours under 305. We'd have our rights to figure out exactly
11 whether or not a standard under 305(a), interests of creditors
12 and the debtors. You'd have every right, under 1525, 1526,
13 1527, to talk to the Cayman judge as to what's going on.

14 And let me get to the heart of the matter. And the
15 heart of the matter from our perspective is two things. In part
16 is what was bothering creditors in Vitro, nine consenting
17 creditors/releasing insiders, and in part it's about what is
18 really going on, and when will it go on in the Caymans that
19 otherwise --

20 THE COURT: Of course the bottom line in Vitro is the
21 Court refused to recognize and enforce a Mexican plan.

22 MR. SABIN: That's right.

23 THE COURT: And that could well be what happened here.
24 I don't know.

25 MR. SABIN: It could.

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19

1 THE COURT: Or not.

2 MR. SABIN: But we were upfront. We put on the table
3 what we thought was a colorable claim. We did so within our
4 rights. And as we read the RSA, and as we read the applicable
5 law, what we are fearful of, is that that claim never sees the
6 light of day. Whether it's investigation, whether it's
7 consideration, or anything else. And that's a potential claim.
8 If it were colorable and/or brought, doesn't detract from this
9 estate; it potentially enhances this estate. And that is the
10 essence of our argument both as a pragmatic way of explaining to
11 you what we're about, and as a way of saying even if you had
12 discretion, please understand from the affidavit, which is
13 simply a statement of law in the Caymans, that that draft
14 complaint under New York law cannot be brought today by the
15 provisional liquidators. Even though there may be an analogue
16 called "Fraudulent Disposition" in the Caymans, the provisional
17 liquidators don't have the right to do that. Clearly the
18 creditors, nobody right now --

19 THE COURT: Who would have the right? And when?

20 MR. SABIN: On an appointment of a full-blown
21 liquidator, which would never happen. If a scheme gets
22 sanctioned, no one would. In fact, as we read the RSA, and
23 these are all in the record; as we read the RSA, and as we read
24 the affidavit from Mr. Kandylidis, the scheme contemplates or
25 will contemplate when it's filed, the discharge of the notes,

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20

1 taking away standing under New York's Debtor and Creditor Law.
2 So, that's at the heart.

3 The second thing that's at the heart is what troubled
4 you at the beginning of this session. You asked, where are we?
5 Now, on April 3 you said, has anyone talked to you? And even
6 today you've heard, no one's talked to us. One day after --

7 THE COURT: I thought Mr. Hollander told me that they
8 talked to you.

9 MR. HOLLANDER: They offered to talk to them.

10 THE COURT: Did they offer to talk to you?

11 MR. SABIN: I guess Mr. Hollander should have been on
12 the phone calls, because I can represent to this Court that we
13 asked for a meeting, we sent a letter asking for documents, we
14 got a letter back, we've had respectful phone calls, and it's
15 basically, when we file, and announce the scheme, and file our
16 first bundle of documents, then we'll sit and chat with you.

17 THE COURT: When is that going to happen?

18 MR. SABIN: I don't know.

19 THE COURT: Can you tell me that, Mr. Hollander?

20 MR. HOLLANDER: The JPLs were in New York today. They
21 met with the Senior Secured Noteholders.

22 THE COURT: Can you tell me when they're going to file
23 a proposed scheme?

24 MR. HOLLANDER: Well, let me tell you a little bit
25 more about the bosses.

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21

1 THE COURT: No, could you answer that question first
2 for now?

3 MR. HOLLANDER: Yes, I can. The scheme documents are
4 still being prepared. We have agreed, and Mr. Sabin knows this,
5 both with Mr. Sabin's client and with the senior secured
6 noteholders that both of those groups will have a full four
7 weeks with the X-Plan before any other creditors see it. So,
8 there is a process underway; there are negotiations to work out
9 schedules. I should have mentioned that earlier. And there's
10 also an agreement that they're going to have the X-Plan a full
11 four weeks before --

12 THE COURT: Working out schedules for what? I'm
13 sorry.

14 MR. HOLLANDER: For the hearings in the Cayman case.
15 Also, yes. The JPL asked for a meeting; these guys asked for a
16 bunch of documents; the JPL said we don't really think it's
17 appropriate to be giving you documents at the moment. We're
18 going to work around the X-Plan to make sure it has all the
19 necessary information to allow --

20 THE COURT: You know, sometimes you can't have a
21 meaningful negotiation unless there's a level playing field well
22 spect to the information.

23 MR. HOLLANDER: Perhaps. But --

24 THE COURT: Don't tell me perhaps, I have a very
25 strong view about that.

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22

1 MR. HOLLANDER: Well, they have had some information,
2 Your Honor. So --

3 THE COURT: What information have the JPL's provided
4 to Mr. Sabin's clients? Have they provided any of the
5 information that they've requested?

6 MR. HOLLANDER: The JPLs have not provided that
7 information.

8 THE COURT: Why is that?

9 MR. HOLLANDER: The Debtor has provided information
10 prior to the filing.

11 THE COURT: Why?

12 MR. HOLLANDER: Because the JPLs believe that the
13 appropriate thing to do is not to respond to one off-creditor
14 request for different information, and we're focusing on putting
15 all the required information into the X-Plan. And we're giving
16 it to them four weeks before any other creditors are seeing it,
17 and they can certainly make comments at that time. But I think
18 we first need to put together the X-Plan, which is essentially
19 the --

20 THE COURT: Have you committed to providing them with
21 information -- when you provide them with the plan, has there
22 been any discussion about the JPLs responding to reasonable
23 information requests regarding the foreign debtor's Debtor and
24 lots of non-debtors, obviously? It's one thing if you hand them
25 a plan, but they ask for information, and you say no.

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23

1 MR. HOLLANDER: Well, first of all, it's not the plan;
2 it's basically, a disclosure statement. And until they get the
3 disclosure statement, I don't know what type of requests they
4 would have. But I'm sure if they have reasonable requests, that
5 they would get it.

6 THE COURT: All right. Go ahead, Mr. Sabin.

7 MR. SABIN: Is now the time to tell you what we
8 requested? We requested particular documents; didn't get them.
9 We also requested the following, and we asked the question and
10 we got an answer. Is there a data room? Yes. Have other
11 creditors had access to it even before the commencement of the
12 Cayman proceeding? Yes. Can we get access now? No. That's
13 not fair. It's not right; it's not fair.

14 THE COURT: Why haven't your clients asked for a
15 hearing before Judge McMillan where the proceeding has been
16 pending? And say to Judge McMillan, they told us they have a
17 data room; they've given some creditors access to it; they
18 refused to give us any access to it; will you please direct them
19 to provide our creditors with access? If there needs to be an
20 NDA or I don't know what the Cayman procedure is with respect to
21 it, but why haven't -- let me ask you this, so we're clear. Has
22 Highland, through its counsel in the Cayman, requested a hearing
23 before Judge McMillan seeking access to information that the
24 Debtors provided to other creditors?

25 MR. SABIN: We have not only because the procedures

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1 are very difficult to get any access in the Caymans.

2 THE COURT: Well, I don't know that.

3 MR. SABIN: Well, we have counsel, so we can only
4 reply upon --

5 THE COURT: It's clearer to me than ever that there
6 needs to be court-to-court communication, so that if the judge
7 is willing to discuss it with me, because courts don't have to
8 agree to have court-to-court communication; then I could get a
9 better sense of what's going on here. Because it sure looks to
10 me that maybe for a very good reason, because you feel you're
11 being stonewalled in the Cayman, you've opted for a strategy to
12 try and blow everything up by coming here; filing an
13 involuntary; I don't know.

14 I said before at the last hearing, my existing
15 provisional remedy doesn't prevent you from filing involuntaries
16 against anybody other than the Debtor. I suggested that
17 everybody ought to hold their fire before you run off and start
18 nuclear war.

19 MR. SABIN: And in fact, consistent with what I'm
20 trying to indicate are our good-faith motives, and
21 notwithstanding the fact that we have that right today, we
22 haven't exercised it yet. So, we --

23 THE COURT: Be careful what you ask for because you
24 may wind up with --

25 MR. SABIN: Oh, we understand that. And it may very

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25

1 well be that we're going to have to exercise that to get anyone
2 to give us any information, get anyone to talk to us, etcetera.

3 THE COURT: I'm still miffed that if what you want is
4 information and there's the proceeding in the Cayman, that your
5 counsel in the Cayman hasn't requested a hearing before Judge
6 McMillan, and raised the question with him. They've given
7 access to other creditors to the data room. They've told us
8 that there is a data room. They've told us that they did give
9 access to some creditors. Which creditors did they give access
10 to? Secured creditors?

11 MR. SABIN: I don't know. I am assuming it's many of
12 the people who signed the RSA.

13 THE COURT: Mr. Hollander, can you tell which
14 creditors got access to -- is there a data room, Mr. Hollander?

15 MR. HOLLANDER: There is a data room, Your Honor.

16 THE COURT: And can you tell us which creditors have
17 had access to it?

18 MR. HOLLANDER: I think there's actually separate data
19 rooms for different clients, but predominantly, it's been
20 counsel and their financial advisors for the term lenders. I
21 think perhaps maybe the initial ad hoc group of term lenders
22 have had some access to the data room. No other of the parties
23 to the RSA, the term lender parties to the RSA, have had access
24 to the data room.

25 THE COURT: Have they signed NDAs? Those who have had

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1 access, have --

2 MR. HOLLANDER: And in fact the company blew out, made
3 public all of the material information that was in the data room
4 on the 27th for the purpose of allowing people to trade. So, all
5 of the material information that was in the data room was blown
6 out, was public, so there shouldn't really be anything that's --
7 yeah, there's nothing in the data room material.

8 THE COURT: So, why don't you give Mr. Sabin's
9 client's access to the data room? If you say there's nothing
10 material that hasn't been blown out, get some credibility with
11 the Defendant-Creditors, and give them access to it. Did the
12 ones who had access sign NDAs?

13 MR. HOLLANDER: Yes.

14 MR. SABIN: And so did we.

15 THE COURT: Mr. Sabin, is your client prepared to sign
16 an NDA?

17 MR. SABIN: Yes. And we signed an NDA. And why when
18 we've signed an NDA, and we asked for access, and didn't get it?

19 THE COURT: Why won't you give them access?

20 MR. HOLLANDER: Well, Your Honor, again, we think that
21 everything that's material has been blown out.

22 THE COURT: That doesn't answer my question.

23 MR. HOLLANDER: Well, because what I think we're going
24 to do, is we're going to pull on a string here; pull on a string
25 there; and if their goals are really --

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1 THE COURT: I'm asking a very clear question.

2 MR. HOLLANDER: Absolutely.

3 THE COURT: Will you give Highland access to the data
4 room, subject to an NDA?

5 MR. HOLLANDER: We don't think they have good
6 intentions, but we will go back and consider it.

7 THE COURT: Go ahead, Mr. Sabin, what else do you want
8 to tell me?

9 MR. SABIN: I think I rest my case, and reserve some
10 time to respond. Thank you, Your Honor.

11 THE COURT: Sure.

12 MR. HOLLANDER: The information they're requesting is
13 not in the data room. They're requesting additional information
14 not in the data room.

15 THE COURT: All right. Why don't you -- now, it's
16 your turn.

17 MR. SCHARTZ: Thank you, Your Honor.

18 THE COURT: Yes.

19 MR. SCHARTZ: Your Honor, it's Brian Schartz, from
20 Kirkland & Ellis, on behalf of the DRH Holders. Do you mind if
21 I speak up on the creditors' side?

22 THE COURT: Go ahead, speak on the creditors' side
23 before Mr. Hollander does. I apologize, I have the list that
24 you're on the phone.

25 MR. SCHARTZ: Thank you for letting me appear by

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1 phone. I ended up stuck in London, or I would have been there
2 in person.

3 So, we represent holders of about 26 percent of 6.5
4 notes, what Mr. Hollander has been referring to as the Senior
5 Secured Notes. To be clear, just to clarify a point that he
6 made at the beginning of the hearing; while they may have some
7 holders out there in these notes that support the scheme, it's
8 not our holders. And our holders have a blocking position in
9 the scheme, and that's where we sit.

10 On the information point, we feel very similar to Mr.
11 Sabin and Highland's position. It's now been 16 days from the
12 last hearing, and at that hearing Your Honor noted several
13 times, the parties should work to see if they can consensually
14 resolve their differences. We agree with that admonition. We'd
15 like to have that opportunity, but it hasn't happened. There
16 have been phone calls, there have been some emails, but really,
17 it's all perfunctory, and it's just this approach that, this is
18 our deal and the creditors will have to take it or leave it.
19 Well, we really don't have any intention of taking this deal
20 that leaves our creditors with cents on the dollar, undervalues
21 their rigs, and gives insiders and management a package of
22 hundreds of millions of dollars.

23 You probably will hear, yes, we did have a financial
24 advisor from Perella Weinberg, who works with us, with the group
25 meet with the JPL today. We were very fortunate to have that

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1 meeting. But it was really us sharing our view of the world,
2 not them giving us information. And what we've heard is really
3 the same answer that you just got, which is, we're not going to
4 give the information because we think they don't need it. Well,
5 we think we do need it. We think it's really, really important.
6 And we've learned some things in the market that are ally
7 disconcerting, that really aren't out there in the public, but
8 we've heard that the company has retained a broker to sell the
9 two rigs that are collateral for our notes. We've heard that
10 hat is a two-week marketing process, and may have other terms
11 that are designed to chill the market, so that they can then
12 take that, we presume, and go to the Cayman court, or go to the
13 bankruptcy court, and say yes, we're right, they are not worth
14 anything because we ran this two-week process.

15 All that stuff gives us a lot of pause. And it's all
16 wrapped into the release that Highland is seeking. And at the
17 end of the day, our group is trying to find the best way to
18 maximize value.

19 THE COURT: Mr. Schartz?

20 MR. SCHARTZ: We would consider --

21 THE COURT: Mr. Schartz?

22 MR. SCHARTZ: We haven't made up our mind, but we
23 would consider --

24 THE COURT: Mr. Schartz, what is the collateral for
25 your client's loans?

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1 MR. SCHARTZ: They're two rigs, the Eirik Raude and
2 Leiv Eiriksson. They're owned by two entities that are
3 indirectly owned by the debtor-entity called Drill Rig Holdings.
4 One of them on contract to a customer called Lundin, and is one
5 is what they call "cold stacked". They're both in waters far
6 outside the Cayman Islands. I believe one's off the Nordic
7 coast, and one's in Greece.

8 THE COURT: Is there any other collateral other than
9 the two rigs?

10 MR. SCHARTZ: There are share pledges below the DRH
11 level.

12 THE COURT: All right. And those shares are being
13 held by a custodian in New York? Is that correct?

14 MR. SCHARTZ: That is our understanding.

15 THE COURT: Okay.

16 MR. SCHARTZ: And we would love to --

17 THE COURT: Are there any other tangible assets other
18 than the two rigs?

19 MR. SCHARTZ: Well, Your Honor, that's a really good
20 question; probably number one on our list, which is where's the
21 cash in our stack? We don't know where the cash is in our
22 stack. And if there isn't a lot of cash in our stack, where did
23 it go? So, we have no visibility really into that. We have no
24 visibility into inner-company claims. And there's an
25 interesting part about the RSA that we just sort of picked up

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1 on, which is just before the commencement of proceedings, the
2 company conducted apparently, a settlement of intercompany
3 claims, presumably with the consent of the parties to the RSA.
4 And we have no idea what happened there. We don't know if our
5 claims were affected; we have no idea. If other parties' claims
6 were affected? You know, we have no idea if that would
7 constitute a fraudulent conveyance. We really have no idea.
8 So, high on our list is understanding exactly the question you
9 asked.

10 THE COURT: Are the owners of the rigs guarantors of
11 your notes?

12 MR. SCHARTZ: The owners of the rigs are guarantors of
13 our notes. Yes, sir.

14 THE COURT: And they're non-debtors?

15 MS. SCHARTZ: They are non-debtors.

16 THE COURT: And the notes are in default?

17 MR. SCHARTZ: Yes, they are in the default and they
18 have been accelerated for a number of reasons.

19 THE COURT: Have you taken any action to foreclose on
20 your collateral?

21 MR. SCHARTZ: No, Your Honor. We're not here -- like
22 Highland, we are not here --

23 THE COURT: I'm just asking questions. I'm just
24 asking questions, okay? I'm not suggesting you should or not.
25 Your collateral, two rigs, owned by non-debtors. I'll assume

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1 for now you have perfected security interest in them; share
2 pledges with the shares held by custodians in New York. That
3 was what I gathered from earlier pleadings in the case. And it
4 was just simply a question. The loans are in default; have you
5 taken any actions. I'm not suggesting you should, but I'm just
6 trying to ascertain whether you took any action to try and
7 foreclose on the collateral.

8 MR. FEDER: May I be heard, Your Honor?

9 MR. SCHATZ: We have not taken any actions to
10 foreclosure on the collateral. And the reason we've done that
11 is, we're still thinking about whether that's the right thing to
12 do obviously. But we're here --

13 THE COURT: I would share that concern. I'm not
14 encouraging you to do it, I'm just trying to ascertain facts.
15 Mr. Feder has stood in the courtroom. Come on up to the
16 microphone, as you're not going to address the Court from back
17 there, Mr. Feder. If you're going to address the Court, you're
18 going to come up to the microphone, indicate who you are, who
19 you represent. Mr. Schartz, do you have anything else you want
20 to say?

21 MR. SCHATZ: Just one last point, Your Honor, which
22 is that we are evaluating all of our options here. And our
23 perspective, my group's perspective is that we want to maximize
24 value. And we don't think the current scheme does anything
25 close to maximizing value. We have significant concerns about

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1 what's going on in the Cayman in public, but also behind the
2 scenes. And if it turns out that an involuntary, together with
3 Highland, should Your Honor so rule, is something that maximizes
4 value, it is something that our group would seriously consider,
5 because we haven't been given a fair shake yet. And we look
6 forward to having a fair shake. Thank you.

7 THE COURT: Well, have you seen the scheme or been
8 told what the terms are, because what I'm being told is it
9 hasn't been prepared yet?

10 MR. SCHATZ: We have not seen the scheme, we have not
11 seen the X-Plan. We have agreed that we'll receive the X-Plan
12 four weeks before all the other creditors. I would expect that,
13 like a disclosure statement, it's going to say a lot, but
14 probably not as much as we would like. So, I don't really hang
15 my hat on that solving all of our issues, or answering all of
16 our questions.

17 THE COURT: Okay. Thanks, Mr. Schartz.

18 MR. SCHATZ: Thanks.

19 THE COURT: Mr. Feder?

20 MR. FEDER: Good afternoon, Your Honor. Thank you for
21 allowing me to speak. For the record, Benjamin Feder, Kelley
22 Drye & Warren, on behalf of U.S. Bank, as Indenture Trustee for
23 the 6.5% Senior Secured Notes, which are the notes that are held
24 by the ad hoc group, represented by Mr. Schartz.

25 And so, I just wanted to clarify for the record that

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1 we, as Indenture Trustee, and Deutsche Bank, as collateral agent
2 for the notes, have not taken any action to foreclose, or to
3 exercise remedies against any entity. I just wanted to state
4 that on the record. We have not received a direction from any
5 holders of the notes.

6 THE COURT: What percentage of the holders have to
7 give you a direction?

8 MR. FEDER: Over 50 percent, Your Honor.

9 THE COURT: Okay.

10 MR. FEDER: So, I just wanted to state that for the
11 record and make that clear.

12 THE COURT: Thanks very much, Mr. Feder.

13 MR. FEDER: Thank you.

14 THE COURT: Mr. Hollander?

15 MR. HOLLANDER: Thank you, Your Honor. Evan
16 Hollander, counsel for the Petitioners. Just a couple of
17 points, Your Honor. It is kind of like chasing after ghosts
18 because the main proceeding is down in Cayman, and people are
19 making allegations about documents and things, and for unfair
20 treatment, and we think that they should be directed to the
21 Cayman proceeding to make those arguments.

22 I will note, with respect to the DRH creditors, the
23 senior secured noteholders, represented by Kirkland, that they
24 have a blocking position, and if they don't like the plan, they
25 can vote the DRH plan down. So, they don't even need to take an

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1 enforcement action. When the scheme is proposed, they can vote
2 the DRH plan down, they're end up with their collateral, if
3 that's what they really want. We think that we have a fair
4 valuation, and this, I think, is well-beyond the scope of what
5 we came here to talk about today.

6 I point out a couple of things, Your Honor. One, Mr.
7 Sabin pointed to 1528, and the limitation of the automatic stay
8 to the territorial jurisdiction of the United States. The
9 interesting thing about that is that only applies if you find
10 that as a foreign main proceeding. So, what Mr. Sabin is trying
11 to do is to take the power away before you even decide whether
12 there's a --

13 THE COURT: You're arguing if it's a foreign main
14 proceeding.

15 MR. HOLLANDER: I am arguing. Also, we're backing up
16 as a non-main proceeding in the papers, so, I just want to point
17 out that before you can make a determination of whether there's
18 a foreign main proceeding, they want to take the jurisdiction
19 and have basically the effect of the extraterritorial effect of
20 the automatic stay.

21 Also, Your Honor, if I can go back, you know, there
22 was affidavit that was filed with the pleadings. I understand
23 the Cayman counsel is not here today to be crossed, but I think
24 that's okay, because reading through that affidavit, I don't
25 think it really says anything remotely to what Mr. Sabin says it

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1 does. And it's very interesting. And what I think we can say
2 today, Your Honor, is that Highland is saying that they have no
3 other alternative but to bring the involuntary, or all their
4 rights are going to go away. That's the demonstrably not true.

5 First of all, I count nine different things they can
6 do. They can meet with the JPLs and attempt to persuade the
7 JPLs of the merits of their actions, so that the JPLs petition
8 the Cayman court to grant authority to bring the actions, which
9 is specified in the affidavit. If they're unsuccessful in
10 persuading the JPLs, or they choose not to try that route, they
11 can seek to have the JPLs removed, because they appear to think
12 the JPLs are not independent. That's what I'm hearing. They
13 could try that. And they could put in more sympathetic JPLs to
14 bring the actions.

15 Highland also has the option to petition the Cayman
16 court directly for authority to bring the claims on behalf UDW.
17 Highland can bring the claims now as direct claims in the Cayman
18 Islands. Highland can bring the claims now if they had a
19 complaint that didn't seek relief against the Debtors as direct
20 creditor claims here in New York under the Debtor and Creditor
21 Law.

22 THE COURT: I'm not sure they could, but that's a
23 different issue.

24 MR. HOLLANDER: They seem to think they can. Highland
25 can await the results of the scheme process in the Caymans.

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1 This is something that you suggested. This is the sixth
2 alternative. If the schemes are successful, they can wait for
3 me to come back to this Court, seeking an enforcement order,
4 which is obviously a very critical component of getting this
5 deal done. And they can seek to have this Court deny such
6 relief on the grounds that their fundamental rights have been
7 abrogated.

8 THE COURT: You know the last several times that --
9 well, I guess I've only approved one. I approved the Hong Kong
10 scheme. I recognized and enforced the Hong Kong scheme. I know
11 some of my colleagues have also recognized schemes. You know,
12 it was a condition to the effectiveness of the scheme that the
13 Chapter 15 court recognize and enforce the scheme. That seems
14 to be a common --

15 MR. HOLLANDER: It's very common; it's very critical I
16 believe, quite frankly. But even if they lose then, and Your
17 Honor says their fundamental rights were not trampled, they
18 don't run out of options then, notwithstanding what they said.
19 If they lose on that basis, they can petition the independent
20 directors of the reorganized company because there is no release
21 of the third-party claims, notwithstanding what Mr. Sabin says.
22 The way he kind of says it is, well, we lose our standing as
23 creditors, so that's a release. But the estates will not lose
24 those claims. They can petition the independent directors to
25 bring those claims.

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1 If the independent directors refuse to bring the
2 claims, Highland can petition the Cayman court directly for
3 permission to bring the claims as derivative claims post-
4 reorganization. And if the schemes fail, because they seem to
5 think that the schemes are so fundamentally flawed, then
6 official liquidators will be appointed, and they can seek to
7 have the official liquidators bring the claims.

8 So, I don't really buy into this whole idea that they
9 don't get the ability to file an involuntary petition, which
10 will take away the ability of the JPL in the Cayman court to
11 make a determination, where they're main proceeding, as we
12 believe. Take that away before you make a determination, and
13 bring it to a U.S. court to decide whether those claims could be
14 pursued. Because it's not a foregone conclusion even in an
15 involuntary converted to a voluntary that there would be
16 authorization to bring those claims. They'd still have to
17 persuade the court. I'm sorry if I'm a little worked up, Your
18 Honor.

19 THE COURT: What I'd like you to do now is -- if you
20 want to get some more off your chest, go ahead and do it, but at
21 the start of Mr. Sabin's argument, I raised several questions.
22 As I read the papers and read cases, it seemed to me that he
23 agreed, I think it was clear, that the order that I entered on
24 April 7 has the effect of enjoining them from filing an
25 involuntary, at least against the Debtor; not against non-

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1 debtors. And so, the two questions that seem to me that arose
2 from that is one, do I have the authority to do what I did? Or
3 did I exceed the authority provided in the Bankruptcy Code by
4 extending the automatic stay in the gap period?

5 MR. HOLLANDER: Thank you, Your Honor.

6 THE COURT: I referred to Vitro and Pro-Fit and Ran.
7 And I don't know whether there are other cases you think. What
8 is it that you believe supports the authority of the bankruptcy
9 court in the gap period before the recognition period --

10 MR. HOLLANDER: Thank you, Your Honor.

11 THE COURT: -- to extend the automatic stay to, here
12 specifically, enjoin to prevent the filing of involuntaries?

13 MR. HOLLANDER: Well, I believe all those cases,
14 perhaps not Ran, are in our brief, Your Honor. We cited to
15 those cases, and we think they do provide support. I think
16 there's one issue that the parties agree on, and that's that the
17 automatic stay does not come into effect upon the filing of a
18 Chapter 15. We quickly part ways after that.

19 THE COURT: So, I did sign an order.

20 MR. HOLLANDER: Yes.

21 THE COURT: The question is, did I have the authority?

22 MR. HOLLANDER: Well, we believe, Your Honor, that
23 it's always within the Court's discretion to grant that relief.
24 And if you look at --

25 THE COURT: Well, I have problems with that. But go

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1 ahead.

2 MR. HOLLANDER: That the Court has the discretion? We
3 think if you look 15 -- first of all, the statement that Section
4 303(b) provides creditors with an unfettered right to file
5 bankruptcy is not true. In fact, even in 303(a), there's a
6 limitation on being able to file involuntaries. There's an
7 absolute prohibition on filing involuntaries against non-
8 debtors. But moreover, the Second Circuit I believe in SEC v.
9 Byers, 609 F.3d 87 (2010), squarely rejected the argument that
10 creditors have an absolute right to file involuntary petitions,
11 and upheld a court's exercise of broad equitable powers to
12 enjoin creditors from filing involuntaries. We also think that
13 the language of 1519 supports the ability of this Court to enter
14 the order.

15 THE COURT: Explain what's in 1519.

16 MR. HOLLANDER: Well, Your Honor, 1519, as you pointed
17 out, 1519(a) is open-ended; has the language "including" and,
18 Your Honor, in Sections (d) and (f), there's express limitations
19 on the relief that the Court can grant. You can't enter an
20 order that violates police and regulatory powers, and you can't
21 enter an order that enjoins actions that couldn't be enjoined
22 under 362, under the automatic stay. Interestingly, there's
23 no --

24 THE COURT: What does 1521(a)(7) provide? Because it
25 does get pulled back in to 1519. It's the granting of "any

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1 additional relief that may be available to a trustee, except"
2 and then as the "avoidance actions".

3 MR. HOLLANDER: Right. Right.

4 THE COURT: That doesn't come into play. I didn't see
5 anybody really deal with -- I guess in Atlas Shipping, I dealt
6 with what 1521(a)(7) means, which I'm not quite sure Vitro --
7 1521 also uses "including". 1521(a) uses "including". There's
8 1521(a)(7), which would be drawn into 1519(a)(3). Does granting
9 additional relief available to a trustee, include what I did?

10 MR. HOLLANDER: I believe so, Your Honor, but I don't
11 think you even have to get to that point, because I think the
12 limitations in 1519 are the limitations. The Court could
13 clearly have said that you can't grant the relief under
14 362(a)(1) or limit it in some way. The way we look at the
15 statute, Your Honor, and I think it's the correct way to look at
16 the statute, is that the Court always has the discretion. It's
17 not automatic, but the Court has the discretion. 1520(c), all
18 it does is says "upon recognition of a foreign main proceeding,
19 the automatic stay comes into effect." (c) says the fact that
20 the automatic stay comes into effect, that, in and of itself,
21 does not prohibit the filing of an involuntary. So, we would
22 even say, although it's not before the Court today, that under
23 1521, it's always within the discretion of the Court, and
24 1520(c) merely makes it clear that the Court always has the
25 discretion.

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1 THE COURT: What are you referring to 1521 that you
2 say would give them the authority to file an involuntary?

3 MR. HOLLANDER: I think that there's the same amount
4 of discretion in 1521 that --

5 THE COURT: Is there a particular subsection of 1521?

6 MR. HOLLANDER: Hold one second.

7 (Pause.)

8 MR. HOLLANDER: It's the same argument as 1519
9 predominantly, Your Honor. The limitations are the same
10 limitations as there are in (d) and (f). I don't know what
11 subsections there are.

12 (Pause.)

13 MR. HOLLANDER: Yeah. 1521(d) and 1521(f) are the
14 limitations. So, I think we read those provisions holistically,
15 and that all 1520(c) does is say, by the way, the fact that the
16 automatic stay is imposed, does not take away the discretion of
17 the Court to permit or deny the ability to file involuntaries.

18 THE COURT: Did you have a gloss on, in 1520(c), the
19 word "entity"?

20 MR. HOLLANDER: I don't know the answer to that
21 question, Your Honor, but I will assume for this argument that
22 "entity" would --

23 THE COURT: So, let's assume that I recognize your
24 Cayman proceeding as a foreign main proceeding. Can they just
25 run off and file an involuntary then?

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1 MR. HOLLANDER: If you recognize it as a foreign main
2 proceeding, and we do not have an order that precludes that,
3 then they could file an involuntary.

4 THE COURT: And under what section of the Code would I
5 have the discretion to enjoin them from filing an involuntary
6 after recognition?

7 MR. HOLLANDER: 1521.

8 THE COURT: 1521? Which subsection? In 1521(a)(1) --

9 MR. HOLLANDER: 1521(a)(1). Yes.

10 THE COURT: Stop. Stop. Let me ask a question.

11 MR. HOLLANDER: Yes.

12 THE COURT: 1521(a)(1) says that upon recognition, the
13 Court may, and may is discretionary -- I've written on that
14 subject -- at the request of the foreign representative, grant
15 any appropriate relief, including staying the commencement.

16 MR. HOLLANDER: And by the way, also, if you agree
17 that it's permissible under 1519, 1521(a)(6) would extend any
18 relief. I think there's an ability under both independently,
19 only restricted by (d) and (f). And the Court has broad
20 discretion. But if you thought it was only, otherwise under
21 1519, 1521(a)(6) would.

22 THE COURT: I don't know. I genuinely don't know. I
23 mean that's why I went off to read the cases. I think Mr. Sabin
24 acknowledged there are no cases. He views it as a question of
25 first impression. I suppose if you define the issue narrowly

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1 enough, it's a question of first impression.

2 MR. HOLLANDER: Correct.

3 THE COURT: I read Vitro, Judge Hale's decision in
4 Vitro; Pro-Fit is a little different; Ran, I suppose it's *dicta*
5 because that's not the issue before me. It's whether the
6 bankruptcy court had denied recognition. But in the course of
7 it, they refer to 1519(a) as including, so, it seems to support
8 it. Do you know of any cases that limit what the Court can do
9 under 1519(a)? Limited beyond what's in 1519(a)(1)-(3)?

10 MR. HOLLANDER: Limited? I'm not sure. Where they
11 might say that they're exclusive?

12 THE COURT: Look, I started by reading the statute. I
13 look at it, and it says including (1), (2), (3). Well, (1),
14 (2), (3) don't directly deal with the issue I have. Maybe (3)
15 does, because (3) is plainly 1521(a)(7).

16 MR. HOLLANDER: I think the Bankruptcy Code itself
17 says that the term "including" is not limited, Your Honor. We
18 cite it in our papers. If I could just have a moment?

19 (Pause.)

20 THE COURT: So, this week, Mr. Hollander, when I
21 taught my class at Columbia Law School, the issue of
22 interpreting 1129(b)(2)(a)(ii), this is the issue of whether
23 creditors have a right to credit bid in a sale and a plan, or
24 does (iii), the indubitable equivalent language say that the
25 Court can deny the right credit bid. And Supreme Court Justice

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1 Scalia said no, I know it says includes, but the specific
2 controls the general. And the specific, I'm analogizing, but
3 the specific for 1519(a) is (1), (2) and (3). I don't know.
4 Where I look right now, the only three decisions I found that
5 address it seem to say the Bankruptcy Court has the authority to
6 do what I did. Then the issue becomes well, have they shown
7 cause to lift the stay. And they really haven't.

8 The pleadings I have before me, don't frame the issue
9 that way. Okay, Judge, we acknowledge you have the power, or
10 you've determined you have the power. Now, here's the evidence
11 that supports cause to lift the stay to permit us to file the
12 involuntary. And it would seem to me, if that's the issue, then
13 they'd have to have an evidentiary hearing. I entered the
14 order. I was satisfied that you had shown cause for getting
15 that relief in the gap period. I granted it. Now, they filed
16 pleadings saying you don't have the power to do it, Judge. They
17 don't cite any cases in support of it. I read three cases that
18 say you do.

19 Let's say, I assume, okay, I think I have the power.
20 Then the issue is, have they shown cause to lift the stay? And
21 that requires evidence. And what I see is a food fight between
22 all of you at this stage. And I have the real concern that the
23 effect of lifting the stay and having an involuntary is to try
24 and totally bollix up the Cayman proceeding, which I'm not
25 anxious to do. That's what I'm sitting here thinking about.

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1 What doesn't give me a lot of confidence or a lot of confidence
2 in the long term, the part of this that bothers me about the
3 Debtor's foreign representative's position is you say oh, we
4 invited them to talk, but you won't give them information.
5 You'll say, oh, yes, we have; they'll say, no, they haven't. I
6 see you all playing hardball, and I see this as a big food fight
7 and I don't want to join that mix.

8 If you were able to persuade me that the foreign
9 representatives are seriously trying to engage with the senior
10 secured noteholders and with the unsecured noteholders, and sit
11 down and provide them with information. Mr. Sabin said we've
12 already signed an NDA. I would say his argument for cause to
13 lift the stay, he's not shown any cause for doing it. But
14 you're not giving me any of that. All right, I've heard enough.

15 I conclude -- I've already described the research that
16 I've done, so, I conclude based on the Fifth Circuit's decision
17 in Ran, 607 F.3d 1017 (5th Cir 2010), the bankruptcy court's
18 decision in Vitro, Judge Hale's decision in Vitro, Northern
19 District of Texas Bankruptcy Court, 455 B.R. 571 (2011). I
20 already referred to his discussion at Page 579 in his opinion,
21 and the Pro-Fit Int'l Ltd. decision at 391 B.R. 850, 864 (Bank.
22 C.D. Cal. 2008), Judge Bufford. I conclude I had the authority
23 to enter the order, granting provisional relief, which enjoins
24 creditors from commencing or continuing any actions against the
25 Debtors or their property within the territorial jurisdiction of

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1 the United States. And on the record before me, the Court
2 concludes that cause has not been established to lift the stay
3 at this stage.

4 The Court requests under 1525 -- well, I'll leave it
5 at 1525. There are other sections that arguably provide it as
6 well. I think that I would benefit from court-to-court
7 communication with Judge McMillan in the Cayman. I'm directing
8 the parties to meet and confer, and try and -- I don't know
9 whether Judge McMillan is prepared to do that or not. I think
10 in the first instance, I think parties should meet and confer
11 and try and agree on a protocol for court-to-court
12 communication. I have a trial starting Monday, I'm going to be
13 completely consumed for the next two weeks. Please, so, not in
14 that period. There are no hearings scheduled in the Cayman at
15 this point. So, I'm not sure that it's something that needs to
16 be done in the next few weeks. But what I am directing is that
17 the parties meet and confer and try to agree on a protocol.

18 The protocol would also include having the parties'
19 Cayman counsel ascertain whether Judge McMillan would be
20 prepared to have a court-to-court communication pursuant to the
21 protocol that the parties would be asked to prepare, and have
22 the courts agree on. I'm not dictating what the protocols
23 should provide. Certainly, the ALI triple 'I' -- I can't
24 remember the precise name of the document, but that deals with
25 cooperation in cross-border proceedings. It has a whole series

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1 of sections and commentary about court-to-court communications.
2 There recently have been the guidelines on court-to-court
3 communications. I don't think the Cayman was part of this.
4 It's been agreed to; it was negotiated with courts in Singapore,
5 Delaware, New York. I think we put it on the website. I don't
6 know the exact status of it currently. So, there's more and
7 more movement about efforts to foster court-to-court
8 communications across borders.

9 So, for now, the stay remains in place. Is discovery
10 underway with respect to the recognition?

11 MR. HOLLANDER: Yes, Your Honor. The parties
12 exchanged discovery requests last Friday and objections are due
13 this Friday.

14 THE COURT: I would like counsel to file a status
15 letter with the Court by five o'clock on May 10, addressing
16 efforts to negotiate a protocol for court-to-court
17 communication. I would encourage that before that happens that
18 you confer with other counsel about having Cayman counsel
19 inquire of Judge McMillan whether it's something he's prepared
20 to consider. If he's not prepared to consider it, that might --
21 there are judges in some parts of the world who just won't do
22 it.

23 MR. HOLLANDER: Yep.

24 THE COURT: I mean the only court that I've had court-
25 to-court communications with is a Canadian court. And

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1 obviously, it's a lot easier with courts that speak the same
2 language. But if Cayman doesn't permit it, I've been told there
3 are some countries that their rules don't permit it. I have no
4 idea whether Cayman does or not. Whether they've engaged in
5 court-to-court communications and then the cases are not. And I
6 would urge that you confer with other counsel about who would
7 make the inquiry and indicate where the inquiry is coming from.
8 And find out if Judge McMillan, if he doesn't want to do it,
9 then that, as far as I'm concerned, ends the subject. But I'd
10 like a status letter by May 10.

11 MR. HOLLANDER: Thank you, Your Honor.

12 THE COURT: Anything else for today?

13 MR. HOLLANDER: That's it, Your Honor.

14 THE COURT: Mr. Sabin, I'll ask you, and maybe you
15 have to talk to your client's first; but do you have a position
16 on court-to-court communication?

17 MR. HOLLANDER: Do I?

18 THE COURT: I'm asking Mr. Sabin first.

19 MR. SABIN: We welcome that, Your Honor.

20 THE COURT: Okay.

21 MR. SABIN: As part of our argument in terms of not
22 convincing you obviously in terms of your authority, but had we
23 obviously had the right, 1525 gives you exactly what you did.

24 THE COURT: And Mr. Hollander, what's your position?
25 Do you have a position on court-to-court communication?

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1 MR. HOLLANDER: I think our clients will be amenable
2 to that.

3 THE COURT: Okay.

4 MR. SABIN: I know you've ruled, but I ask for a
5 shorter period to respond. I want to respond to --

6 THE COURT: No. Once I rule, I rule.

7 MR. SABIN: Understood. Fair enough.

8 THE COURT: Look, I don't think the issues today were
9 easy issues. I've spent time reading the cases, thinking about
10 the issues, and I think I've already ruled. But the one thing I
11 want to make clear and this ought to be clear from my comments,
12 I'm declining for now to modify or lift the stay. That doesn't
13 mean that that's forever.

14 MR. SABIN: I appreciate it, and I just want to make
15 sure that for the record, to the extent we want to reserve
16 appeal rights, whether they're of right or interlocutory, that
17 the record itself and your decision on the record is what we
18 will use.

19 THE COURT: I'm so-ordering the transcript. You can
20 order the transcript.

21 MR. SABIN: Right. Thank you, Your Honor, very much.

22 THE COURT: All right. Thanks very much.

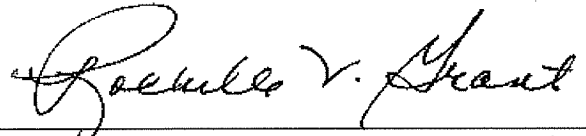
23 MR. SABIN: Thank you for your time.

24 - oOo -
25

CERTIFICATION

I, Rochelle V. Grant, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: April 22, 2017

A handwritten signature in cursive script, reading "Rochelle V. Grant". The signature is written in dark ink and is positioned above a horizontal line.

Signature of Approved Transcriber